

*Foundations in Environmental Review:  
National Environmental Policy Act and  
HUD's Environmental Review Procedures  
of 24 C.F.R. Part 58*

**June 11-13, 2013**

**Austin, Texas**



# Course Objectives

*Knowledge* – Understand NEPA and related environmental authorities

*Compliance* – Follow procedures for carrying out environmental review responsibilities

*Quality* – Achieve genuine environmental protection

*Efficiency* – Focus resources on relevant issues and avoid missteps

# Course Materials

- Training Materials with Slide Presentations
- Region VI Part 58 Guidebook
- Region VI Handbook of Regulations for HUD Environmental Compliance
- HUD Environmental Weblinks
  - Region VI:  
<http://portal.hud.gov/hudportal/HUD?src=/states/shared/working/r6/environment/environmental>.
  - Headquarters:  
<http://www.hud.gov/offices/cpd/environment/atec.cfm>



# Additional HUD Guidebooks

- **Environmental Review Guide for CDBG Programs**
  - [http://portal.hud.gov/hudportal/documents/huddoc?id=env\\_review\\_guide.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=env_review_guide.pdf)
- **Noise Assessment Guide Book**
  - [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/environment/training/guidebooks/noise](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/training/guidebooks/noise)
- **Acceptable Separation Distance Guidebook**
  - <http://portal.hud.gov/hudportal/documents/huddoc?id=HUD-Guidebook.pdf>
- **Barrier Design Guidance for HUD Assisted Project Near Hazardous Facilities**
  - [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/environment/training/guidebooks/hazfacilities](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/training/guidebooks/hazfacilities)
- **Choosing an Environmental Safe Site**
  - <http://archives.hud.gov/funding/2008/safesite.pdf>

# **24 CFR Part 58 – Legal and Regulatory Overview**

# Legal and Regulatory Overview

- National Environmental Policy Act
- HUD's NEPA Implementation Procedures
  - Subpart A—Purpose, Legal Authority, Federal Laws and Authorities
  - Subpart B—Responsibilities of Responsible Entities
  - Subpart C—Environmental Review Procedures
  - Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification
  - Subpart E—Environmental Review Process: Environmental Assessments
  - Subpart F—Environmental Review Process: Environmental Impact Statements
  - Subpart G—Environmental Review Process: Procedures for Draft, Final and Supplemental environmental Impact Statements
  - Subpart H—Release of Funds

# NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

# National Environmental Policy Act of 1969

- National charter for environmental protection
- Established Council on Environmental Quality (CEQ)
- Requires all Federal agencies to adopt a systematic interdisciplinary approach to decision-making to ensure environmental values are considered
- Requires Federal agencies to developed NEPA implementing procedures



## For Major Federal Actions Significantly Affecting the Environment, Federal Agencies Must Prepare a Written Statement that Outlines

- Environmental impact of the proposed action,
- Adverse environmental effects which cannot be avoided should the proposal be implemented
- Alternatives to the proposed action
- Relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity
- Irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented

# Council on Environmental Quality's NEPA Regulation, 40 CFR 1500-1508

- Implement NEPA Section 102(2)—Action forcing provisions
- Basis for agency-specific procedures
- Require environmental information to be made available to public officials and citizens before actions are taken
- The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.
- Intent of NEPA is to foster better decision-making rather than better documents

# Core Policy of CEQ's Regulations

- Integrate NEPA requirements with other planning and environmental review
- Decision-making based on understanding of environmental consequences
- Take actions that protect, restore, and enhance the environment.
- Encourage and facilitate public involvement in decision-making
- Consider reasonable alternatives to avoid or minimize adverse effects
- Avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

# NEPA is the Umbrella

- For compliance with other Federal laws and authorities
- A wide range of environmental factors must be considered – these are the spokes of the umbrella...



# Environmental Review of Federal Laws and Executive Orders

- CEQ Regulations require environmental reviews to consider other federal environmental laws and executive orders
- Including those that affect:
  - Historic Properties
  - Fish and Wildlife
  - Human Health
  - Land
  - Water
  - Air





# Must Consider Alternatives – “the Heart of NEPA”



*Alternative Sites...Design...Actions...Timeframes*

# Must Consider Direct & Indirect Impacts

**DIRECT IMPACT:** Fill site for new subdivision

**INDIRECT IMPACTS:**

Truck traffic thru  
historic downtown



Truck traffic across  
historic bridge



New gravel pit &  
new truck road





# Must Consider Cumulative Impacts of Multi-phase Projects



## CUMULATIVE IMPACTS:

**Regional sewer system:**

3 new sewer plants – 3 phases –  
in 3 communities along a river





# Must Consider Cumulative Project-Specific Impacts



Noise Exposure



Site Contamination



Environmental Justice

# Value of Environmental Review

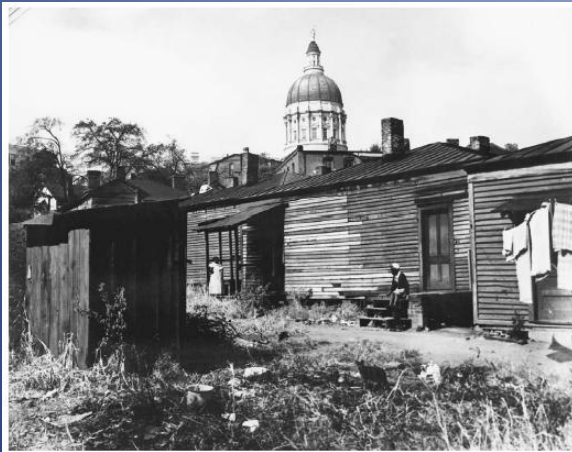
- Required by law: NEPA & related authorities
- Secures the value of public investment
- Results in higher quality projects
- Avoid or mitigate environmental impacts that may harm our clients
- Avoid or mitigate any harm to the surrounding environment
- Helps avoid litigation that could stop project
- Grantees avoid monitoring findings and sanctions

# “Federal Agency” [CEQ 40 CFR 1508.12]

- Federal Agency means all agencies of the Federal Government – but....
- Pursuant to section 104(h) of the Housing and Community Development Act of 1974 and HUD’s 24 CFR Part 58 NEPA implementing procedures, this definition also includes:
  - States
  - Indian tribes
  - Units of general local government that assume HUD’s NEPA responsibilities

# HUD'S NEPA IMPLEMENTATION PROCEDURES

# HUD'S Mission: To provide a decent, safe and sanitary home and suitable living environment for every American..."





# NEPA Procedures Are One Means for Achieving HUD's Mission

- Two regulations provide for HUD's implementation of NEPA and related authorities
- **24 CFR Part 50 – applies to HUD itself**
  - “Protection and Enhancement of Environmental Quality”
- **24 CFR Part 58 – applies to States, Counties, Cities, Tribes**
  - “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities”

# Purpose of HUD's Environmental Review Procedures

- **To protect the Environment**
  - *Endangered species, wetlands, historic properties, air and water quality....*
- **To protect the Project**
  - *Toxic contamination, explosive operations, noise impacts, floods, airport hazards....*

# HUD's Environmental Review Approach

- Process Driven
- Interdisciplinary
- Analytical





# **SUBPART A—PURPOSE, LEGAL AUTHORITY, FEDERAL LAWS AND AUTHORITIES**

# Part 58 Applies to the Following HUD Programs [ 58.1(b)]

- CDBG
- Homeless programs of Title IV McKinney-Vento Homeless Assistance Act
- Supportive Housing program
- Shelter Plus Care
- HOME
- Lead-based paint abatement programs
- HOPE VI
- Public Housing Agency administered Section 8
- EDI
- FHA MFH Pilot Program
- SHOP
- NAHASDA
- HOPWA
- Others with Part 58 named in appropriation

# Activities and Projects [ 58.2]

- Project:
  - an activity, or a group of integrally related activities, designed to accomplish, a specific objective
- Activity:
  - an action that a grantee or recipient puts forth as part of an assisted project
  - regardless of whether its cost is to be borne by HUD assistance or is an eligible expense under the HUD assistance program

# Recipients of HUD Assistance

## [ 58.2(a)(5)]

- Entities having executed a grant agreement with HUD, including
  - Units of general local government (UGLG) [Section 5302(a) Housing and Community Development Act of 1974]
    - County, parish, city, town, township, village or other general purpose political subdivision of a State
    - Have power to levy taxes and expend Federal, State, and local funds and exercise governmental powers
  - States
  - Indian tribes & tribal housing authorities
  - Public housing authorities
  - Non-profit organizations
  - For-profit entities

# Release of Funds [ 58.2(a)(6)]

- **Request for Release of Funds (RROF)**
  - recipient's request for a firm approval letter after completion of environmental review requirements
- **Release of funds**
  - HUD issuance of a firm approval letter, and environmental clearance

# Responsible Entities (REs) as Recipients [ 58.2(a)(7)]

- **Specific programs:**
  - CDBG
  - Title IV McKinney-Vento Homeless Assistance Act
  - HOME
  - Lead-based Paint Abatement Programs
- **RE's Limited to:**
  - UGLGs—if a UGLG receives these grants—it must be the RE
  - States or Indian tribes that do not distribute HUD assistance to a unit of general local government.

# Non-Recipient Responsible Entities

## [ 58.2(a)(7)]

- **Recipients:**
  - Public and tribal housing authorities
  - Non-profit organizations (e.g., SHOP, EDI)
  - Housing finance agencies
  - Other public and private organizations
- **Non-Recipient Responsible Entity :**
  - UGLG exercising land use responsibility in the area where a project is located
  - Unless HUD determines this is infeasible, then:
    - County
    - State

# **Non-Recipient Responsible Entities**

## **[ 58.2(a)(7)(ii)]**

### **UGLGs--RE for:**

- Housing Finance Agencies
- Public Housing Agencies
- Non-Profits
- For Profits

### **Indian tribes--RE for:**

- Housing Finance Agencies
- Indian Housing Agencies
- Non-Profits
- For Profits

### **States--RE for Projects that are State undertakings by:**

- Housing Finance Agencies
- Non-Profits
- For-Profits



# Assumption Authority — 58.4

- RE assumes HUD's authority by executing a grant agreement (as Recipient) and/or by certification of the RROF.
- RE assumes responsibility for:
  - Environmental **review**
  - Environmental **decision-making**
  - Environmental **action** that would apply to HUD under NEPA and related laws

# **HUD's Unique Authority to Allow Entities to Assume HUD's Responsibilities Under NEPA and other Federal Laws and Authorities ( 58.4)**

**UGLGs Receiving HUD Assistance  
Under Part 58 Shall**

**States for Projects that are State  
Undertakings Shall**

**Tribes May**

# NEPA-Related Laws and Authorities ( 58.5)



- National Historic Preservation Act (1966)
- Protection and Enhancement of the Cultural Environment (1971)
- 36 CFR Part 800 and 801
- Reservoir Salvage Act of 1960
- Executive Order 11988 Floodplain Management (1977)
- 24 CFR Part 55
- Executive Order 11990, Protection of Wetlands (1977)
- Coastal Zone Management Act (1972)
- Safe Drinking Water Act (1974) and 40 CFR Part 149
- Endangered Species Act (1973)
- Wild and Scenic Rivers Act (1968)
- Clean Air Act (1970)
- Noise Control Act (1972)
- 24 CFR Part 51 HUD Environ. Criteria & Standards (1984)
- 24 CFR 58.5(i)(2)(i)-Contamination and Toxics
- Farmland Protection Policy Act (1981)
- Environmental Justice E.O. (1994)

# Other Requirements

## ( 58.6)

- Does not trigger certification or release of funds
- RE is responsible for addressing the following:
  - **Flood Disaster Protection Act of 1973**—Flood insurance requirements
  - **Section 582 National Flood Insurance Reform Act of 1994**—prohibition of HUD assistance when Flood insurance was not maintained as required
  - **Coastal Barrier Resource Act as amended by the Coastal Barrier Improvement Act of 1990**—No development in a coastal barrier resource area
  - **24 CFR Part 51--Buyer Notification Requirements for Runway Clear Zones and Clear Zones**

# **SUBPART B—RESPONSIBILITIES OF RESPONSIBLE ENTITIES**

# RE's Basic Environmental Responsibility [ 58.10]

- RE must assume HUD's environmental responsibilities
- Must comply with:
  - NEPA
  - CEQ regulations of 40 CFR parts 1500 through 1508
  - all requirements of Part 58

# Non-Recipient Responsible Entities

## [ 58.10]

- Performs environmental review on behalf of the recipient
- Must independently evaluate information provided by the Recipient
- Ensure that environmental review complies with NEPA and related laws and authorities

# Option to Reject an RE [ 58.11(c)]

- At any time HUD/GLO can reject the use of an RE:
  - On the basis of performance
  - Timing or compatibility of objectives
  - Due to problems found during monitoring
- HUD/GLO may designate an alternate RE



# RE's Capacity - 58.12

The RE must develop the capacity to conduct environmental reviews:

- **Technical capacity**--Professional Expertise
  - In-House
  - Outside consultants
- **Administrative capability**
  - Procedural
  - Recordkeeping

# Role of the Certifying Officer

## [ 58.13]

- RE's certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA
- Responsible for all the requirements of:
  - NEPA section 102
  - Related provisions in 40 CFR parts 1500 through 1508
  - 24 CFR part 58, including the related Federal authorities
- Represents the RE and is subject to the jurisdiction of the Federal courts.
- Ensures that the RE reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

# RE's Must Interact with Other Entities in Preparing Environmental Reviews [ 58.14]

- Consult with appropriate Federal agencies
- Cooperate with other agencies to reduce duplication
- May participate in a jointly prepared environmental review:
  - Lead Federal Agency
  - Cooperating Agency

# Tiered Reviews - 58.15

- Environmental Reviews may be tiered to avoid repetition
- Appropriate when:
  - Evaluating a policy or proposal
  - Early Stages of Development
  - When site-specific analysis is not feasible and more narrowed and focused review is better done at a later date

# Tiering (Con't.) Broad Review

- Identify and evaluate issues ripe for decision
- Exclude issues not relevant to the program, policy or project
- Establish the policy, standard and process for completing site specific reviews

# Tiering is Generally Restricted to Projects that are Categorically Excluded Subject to 58.5

- Tier 1: **Broad review.** Address all laws and authorities possible and establish a plan (narrative) for the site-specific or subsequent review. Publish public notice (NOI/RROF) and submit RROF
  - Appropriate at a sub-division, neighborhood, city or county level
- Tier 2: **Site-Specific review.** *No* public notice or RROF required unless unanticipated impacts or impacts not adequately addressed in prior review



# **States Administering HUD Environmental Review Responsibilities (Section 58.18)**

- GLO is responsible for administering Subpart H, Release of Funds
- GLO has developed and conducted a monitoring and enforcement program
- Accept Request for Release of Funds
- Receive objections and appeals
- Issues Authority to Use Grant Funds

# **SUBPART C—ENVIRONMENTAL REVIEW PROCEDURES**

# Time Periods ( 58.21)

- Counted in calendar days
- First day of the time period begins at 12:01 AM local time on the day following publication or posting.

# Limitation on Activities Prior to Clearance - 58.22(a)



- Prior to Receiving Environmental Clearance a Recipient Must Not Commit:
  - HUD Funds, or
  - Non-HUD funds if the activity would:
    - have an adverse environmental impact, or
    - limit the choice of reasonable alternatives
- This limitation is rooted in all NEPA related authorities – *Don't take action until compliance is achieved !*

# Section 58.22 Limitation on Third Parties



**Part 58 extends this prohibition to third parties, including:**

- Recipients, *and*
- Participants in the development process
  - Public or Private Nonprofit
  - For Profit Entities
  - Contractors

# When the RE is Aware an Applicant is About to Take Action Prohibited by 58.22

- They Must Take Action to Ensure  
NEPA is Followed - 58.22(c)





# What are Choice-Limiting Actions?

- Real property acquisition
- Leasing
- Disposition
- Demolition
- Rehabilitation
- Repair
- Construction
- Site improvements

# Consequences of Violating 58.22

- **Regulatory violation:**
  - Commitment of Non-HUD Funds
  - Can result in loss of ALL HUD assistance for the project
- **Statutory Violation:**
  - Commitment of HUD Funds
  - Can affect funding for entire program under which violation occurred

# Why is this Limitation Important?

- Decision-making prior to completing the environmental review process
  - Biases the objective consideration of alternatives
  - Eliminates the opportunity for public-participation in the decision-making process

# Exceptions to 58.22 Limits ( 58.22 c, d)

- **Options for land acquisition are allowed if:**
  - They are subject to final outcome of the environmental review; and
  - The cost of the option is nominal

# Cost of Performing the Review

## [ 58.23]

- Grant funds can be used for environmental reviews
- Can cover the cost of consultants to help prepare reviews

**SUBPART D—ENVIRONMENTAL  
REVIEW PROCESS:  
DOCUMENTATION, RANGE OF  
ACTIVITIES, PROJECT  
AGGREGATION AND  
CLASSIFICATION**

# Environmental Review Process

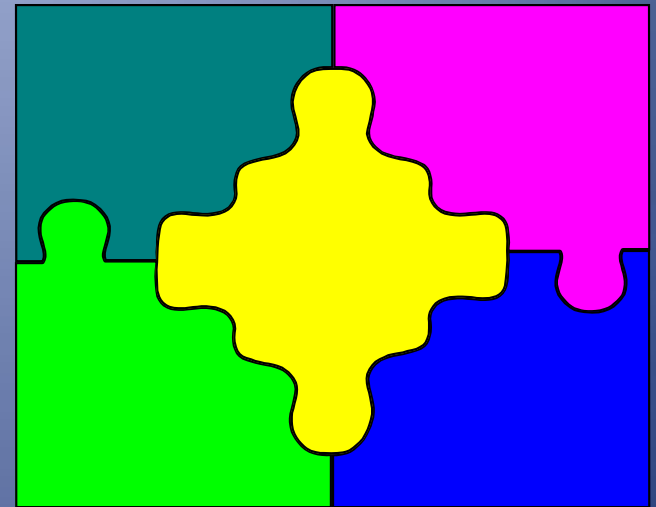
## [ 58. 30]

- Consist of all actions the RE must take to determine compliance, including
  - All activities of the aggregated project, including those not assisted by HUD
- Start the process as soon as use of HUD funds is identified



# PROJECT AGGREGATION ( 58.32)

- RE must group together and **evaluate as a single project** all individual activities that are related:
  - Geographically
  - Functionally
  - Logical parts of a composite of contemplated actions



# Purpose of Aggregation [ 58.32]

- To adequately address under one environmental review:
  - Separate and combined impacts of similar, connected and closely related , dependent activities
  - To allow consideration of reasonable alternative courses of action
  - To schedule activities to resolve conflict or mitigate individual, combined and cumulative effects
  - Prescribe mitigation measures and safeguards

# Multi-year Project Aggregation

## [ 58.32(d)]

- Must consider all components of the multi-year project regardless of the source of funds
- Evaluate cumulative environmental effects
- Estimate the range of aggregated activities
- Estimate cost of total project in the environmental review and the RROF
- Must re-evaluate under 58.47 with a change in scope, magnitude or conditions

# Emergencies [ 58.33]

- Taking an action that has a significant effect on the environment during an emergency, disaster or imminent threat – the RE must follow 40 CFR 1506.11 procedures
- For a **declared emergency** when there is a need for action to protect public safety
  - Notice of Intent to Request Release of Funds (NOI/RROF) and Finding of No Significant Impact (FONSI) Notice can be published simultaneously with submission of the RROF to HUD/State.
  - Notices must state that funds are needed for a declared emergency
  - Notice must state that comments can be sent to the RE and HUD

# Levels of Environmental Review

## Classification:

- **Exempt [ 58.34]**
- **Categorically Excluded Not Subject to 58.5 [ 58.35(b)]**
- **Categorically Excluded Subject to 58.5 [ 58.35(a)]**
- **Environmental Assessment [ 58.36] and Subpart E**
- **Environmental Impact Statement [ 58.37] and Subparts F and G**

## Level of Complexity

Increasing Complexity



# Extraordinary Circumstances

## [ 58.35(d)]

- **Situation in which an NEPA review is not normally required but occurs when actions are:**
  - Precedent-setting
  - Similar to actions requiring that normally require an EA or EIS
  - Actions that are likely to alter existing HUD policy or HUD mandates
  - Unusual physical conditions with the potential for a significant impact on the environment
  - Environmental conditions could have a significant impact on users of the facility
- **Example: When and EA or EIS is required for a Categorically Excluded project of 58.35(a) or (b)**

# Environmental Review Record – (ERR) - 58.38

- Written record of the environmental review undertaken for each project
- Shall be available for public review
- Must use HUD recommended formats or equivalent



# The ERR is the Administrative Record

- Public has the right to review it
- It is the only proof of compliance with Part 58, NEPA and Related Laws and Authorities
- It is the RE's defense against environmental challenges
- May be subpoenaed and subject to scrutiny by a court of law
- Keep it well organized, complete and transparent

# Contents of ERR - 58.38

- Project description including precise location or target area and maps
- Written determinations & findings
- Documentation of compliance with 58.5 authorities and 58.6 requirements
- EA or EIS
- Photographs, site plans, elevations
- Proprietary information or that which is not normally available to the public must be included in the record.
- Public notices, RROF, correspondence, Authority to Use Grant Funds

# Meaningful Project Descriptions Include

- **Location**—describe so the public can locate (e.g. street address or map coordinates)
- **Purpose and Need**—describe what is being done and why it is necessary. What need does it meet?
- **Area:**
  - Character
  - Features
  - Resources
  - Trends likely in the absence of the project
- **Activity Description**—provide complete details about what will be done
  - Type of project (e.g. new construction of multifamily housing )
  - Details of aggregated project
  - Timeframe for implementation
  - Size of the project (area coverage, disturbance footprint, number of units, population served)

## Source Documentation - 58.38

Source documentation must contain information that is:

- **CREDIBLE**
  - **VERIFIABLE**
  - **RELEVANT**
- to the analysis

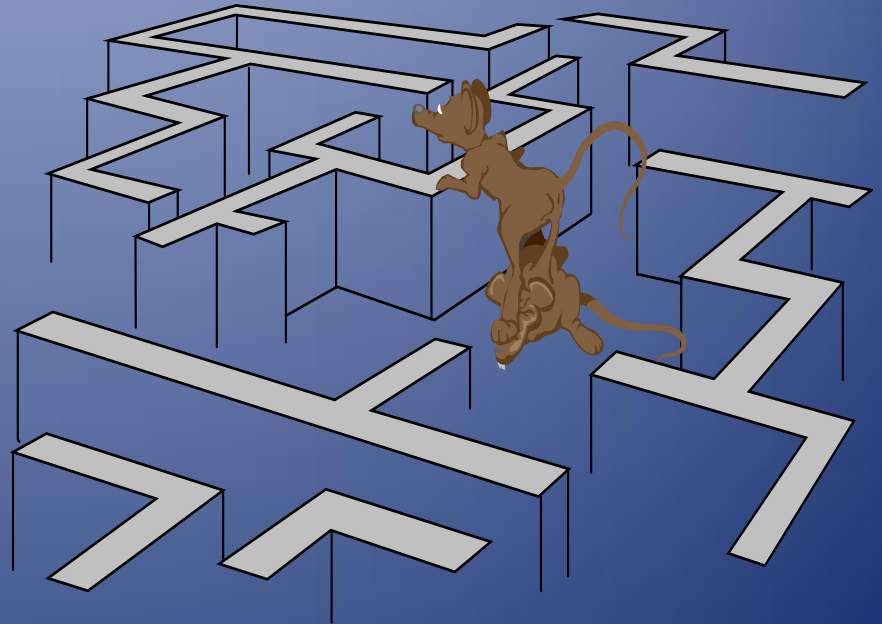


# Credible Documentation

- Federal, State, local oversight agencies or recognized authoritative sources
  - EPA or state department of environment quality
  - Metropolitan/Regional Planning Agency
  - US Fish and Wildlife Service
  - State Historic Pres. Officer (SHPO)
  - Local/County HAZ MAT coordinator
  - Biologist/botanist/qualified professional engineer

# Verifiable

- City or County land use plans or comprehensive plans
- Floodplain maps, zoning maps, USGS topographical map
- Historic registers
- Aerial photographs



# Relevant Documentation

- ASTM Phase I or Phase II site assessments
- Historic or archeological survey
- Noise analysis
- Soil/geological studies
- Grading plans
- Asbestos surveys
- Wetlands delineation
- Federal, State or local environmental reviews

# Documentation and Review Complexity





# Reviews May Require Specialized Expertise to Prepare Studies

- **Historic Properties**
  - e.g. Cultural resource and archeological surveys
- **Endangered Species**
  - e.g. Biological Evaluations and Habitat Assessments
- **Contamination and Toxics Hazards**
  - e.g. Phase I, Phase II, Phase III
- **Noise Analysis and Mitigation**
- **Floodplains**
  - e.g. Flood survey
- **Wetlands**
  - e.g. Wetland Delineation Study

# Documentation Pointers

- **Project Descriptions**
  - Must be clear and informative
- **MAPS**
  - Must identify the project location
- **Requests for Consultation**
  - Must be sent on RE letterhead
- **Authors and Signatories must be identified**
  - RE name and address on determinations and environmental reviews
  - Name and title of signatory printed
  - Specialized studies must be signed by qualified professional who prepared it

**SUBPART E—ENVIRONMENTAL  
REVIEW PROCESS:  
ENVIRONMENTAL ASSESSMENTS  
(EA'S)**

# Environmental Assessment Contents

## [ 58.40]

- Existing conditions
  - Character
  - Features
  - Resources
  - Trends likely in the absence of the project
- All potential environmental impacts (adverse, beneficial)
- Determine significance of effects and further compliance with 58.5 and 58.6
- Recommend project modification or mitigation measures
- Examine alternatives, including no action
- Make a Finding:
  - Significant Effects on the environment—proceed with EIS
  - Finding of No Significant Impact (FONSI)

# FONSI Dissemination/Publication

## [ 58.43(a)]

- FONSI notice must be prepared using HUD recommended format, or equivalent
- FONSI notice must, at a minimum, must be sent to:
  - Individuals and groups know to have an interest
  - Local news media
  - Appropriate local, tribal and state agencies
  - Regional Office of the U.S. Environmental Protection Agency

# Publication/Posting

- Publish FONSI in a newspaper with general circulation in the affected community in a manner consistent with REs "Citizen Participation" process
- If not published, prominently display in public buildings within the project area

# FONSI Notices [ 58.43(b)]

- FONSI notices can be published at the same time as NOI/RROF as two separate notices, or
- FONSI notices can be combined with NOI/RROF
  - Indicate notice meets two separate procedural requirements
  - Advise public to specify which notice their comments address
- Public comments must be considered and responded to before the RE submits the RROF

Minimum Public Comment Periods [ 58.45 and 46]		
Notice Type	Public Comment Period Requirements	
	Published	Posted/Mailed
Notice of Finding of No Significant Impact (FONSI)	15 days	18 days
Notice of Intent to Request Release of Funds (NOI/RROF)	7 days	10 days
Concurrent or Combined Notices	15 days	18 days



# Time Delays for Exceptional Circumstances [ 58.46]

- FONSI must be available for comment for 30 days when:
  - Considerable public interest in the project
  - Project is controversial
  - Project is similar to other projects normally requiring an EIS
  - Project is unique and without precedent

# Re-Evaluating Environmental Assessments or Other Environmental Findings [ 58.47]

- **Re-evaluation is required when:**
  - Substantial changes in:
    - Nature
    - Magnitude
    - Extent of project
    - Adding new activities
  - New circumstances and environmental conditions
  - Selection of an alternative not included in original EA
  - Changes to data or conditions upon which original EA was based
- **If finding remains unchanged**
  - Include re-evaluation in ERR
  - No need for republication of FONSI
- **If findings change, a new EA must be completed**

**SUBPART F—ENVIRONMENTAL  
REVIEW PROCESS:  
ENVIRONMENTAL IMPACT  
STATEMENT DETERMINATIONS**

# Adoption of Other Agency EIS's [ 58.52]

- May adopt a draft or final EIS prepared by another agency if:
  - It was prepared in accordance with 40 CFR 1506.3
  - May prepare a Supplemental EIS if the HUD project differs from original
    - Scoping requirements do not apply
    - Must inform agency that prepared the original EIS
- When RE participates as a cooperating agency:
  - Not required to re-circulate or file the EIS
  - Must complete the RROF process

# Use of a Prior EIS

- **No new EIS is required when:**
  - Final EIS listed in the Federal Register for a project subject to Part 58
  - Broad scale final EIS issued
  - EIS anticipated subsequent project requiring environmental clearance
- **ERR decision must be made that the Project is not a new federal action significantly affecting the environment**
  - Must include references to prior EIS
  - Evaluation of environmental factors, including those not previously assessed
  - Analysis showing the proposed project is similar to that of the prior EIS
  - EIS's mitigation measures must be relevant
- **EIS can be updated if**
  - Not more than five years old
  - Reflect significant revisions made to original assumptions
  - Reflects current environmental issues, data and legislation
  - No litigation pending

**SUBPART G—ENVIRONMENTAL  
REVIEW PROCESS: PROCEDURES  
FOR DRAFT, FINAL AND  
SUPPLEMENTAL  
ENVIRONMENTAL IMPACT  
STATEMENTS**

# Procedures for EIS's—Generally Follow CEQ Regulations

- Notice of Intent to Prepare an EIS
  - Follow 40 CFR 1500-1508
- Scoping Process
  - Must wait 15 days after NOI/EIS publication before holding Scoping Meeting
- Lead Agency Designation
  - Follows 40 CFR 1501.1(c)
- Public Hearings and Meetings
  - Conducting in accordance with 40 CFR 1506.6
- Draft and Final EIS to EPA Headquarters and Regional EPA Office
- Since many of the public notice requirements involve publication in the Federal Register, HUD involvement is likely.

# **SUBPART H-RELEASE OF FUNDS FOR PARTICULAR PROJECTS**



# PUBLIC NOTICE REQUIREMENTS

# Notice of Intent to Request Release of Funds [ 58.70]

- Notice of Intent to Request for Release of Funds (NOI/RROF) must be disseminated and/or published in the manner described in 58.45.
- The RE must **not** sign the certification of the Request for Release of Funds (RROF) before the close of required public comment periods.

# Reasons for Process

- **Inform the Public** – *two* comment periods must be observed – at local level and then with HUD/GLO
- **Responsibility** – the RE (and Recipient, if applicable) certify to HUD/GLO that environmental compliance has been met
- **Required by Statute and Regulation** – Sec 104(g) of HCD Act and 24 CFR Part 58, including 58.22 – no action until RROF approved

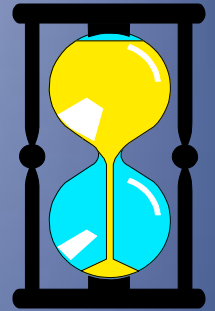
# Three Types of Public Notices

- “*Notice of Intent to Request the Release of Funds*” (NOI/RROF)
  - Required for projects that are CEST
  - Required for projects that require an EA or EIS
- Notice of “*Finding of No Significant Impact*” (FONSI) required for EAs
- **Combined NOI/RROF and FONSI notices must:**
  - Indicate notice meets two separate procedural requirements
  - Advise public to specify which notice their comments address

# Notice Documentation

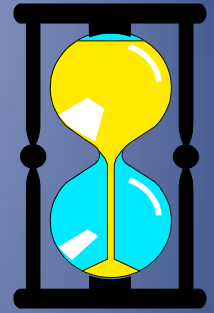
- Publishing: Copy of publication and publisher's affidavit
- Posting: Copy of posted notice and signed statement of distribution
- Mailing: Copy of letter and distribution list of Interested Parties

# Timing & Counting Days



- RE starts counting the day **AFTER** publication
- If last day of comment period falls on Sat, Sun or Holiday, accept comments through the following business day
- RE may extend comment period for any reason
- **RE Signs** and submits RROF day **AFTER** last day of comment period

# Example: RE's 15-day Comment Period



S	M	T	W	T	F	S
			1 - <b>Pub</b>	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17 - <b>RROF</b>	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

# Key Pointers

- Use HUD-recommended template for public notice. It contains the minimum content - you may add language, but do not subtract
- Triple check the dates before publishing/posting – including submission date to **HUD/GLO**
- Describe project **fully** and **concisely** including environmental issues and mitigation
- Use common language for project location – e.g., 123 Elm St, not “Parcel #0100-45095”





# Key Pointers (Con't.)

- Notice must provide RE's address for receipt of comments (e.g., not housing authority or other grant Recipient)
- FONSI comment period is 15 days if published/18 days if posted – 30 day period if controversial ( 58.45)
- “Combined” FONSI/NOI-RROF notice has the same comment & notification requirements as a FONSI (as stated above)

# Key Pointers—All Public Notices

- Combined notice must clearly indicate that it is intended to meet two separate procedural requirements and must advise the public to specify in their comments which ‘notice’ their comments address ( 58.34(b))
- RE must send the FONSI and NOI-RROF to individuals & groups known to be interested, local news media, appropriate tribal, local, state and federal agencies, Regional EPA and local HUD Field Program Office, and HUD Field Environmental Officer ( 58.43(a))

# Request for Release of Funds

- RROF must be executed by the Certifying Official [ 58.71(a)]
- RROF must:
  - Describe specific project and activities, including required conditions and mitigation measures
  - Include certification

# REQUEST FOR RELEASE OF FUNDS

# Parties Involved

- **Responsible Entity (RE)** – state or unit of general local government
- **Recipient** – when the Recipient and the RE are not the same entity – such as Council of Government or Public Housing Authority
- **HUD Program Office** – e.g., CPD, Public Housing, ONAP – or **State (GLO)** (when acting in role of HUD)

# When the RE Prepares Environmental Reviews on Behalf of Recipients [ 58.71]

- The RE must:
  - Independently evaluate environmental information Recipient provides
  - Prepare environmental review
  - Provide the Recipient with the Certification Form (e.g. 7015.15)
  - Description of environmental conditions that must be adhered to in carrying out the project

# Recipients Receiving HUD Assistance Must [ 58.71]

- Provide the RE with all available project and environmental information
- Refrain from undertaking any physical activities or choice limiting actions until HUD/State/Tribe issue authorization to use grant funds
- Abide by special conditions, procedures and requirements of the environmental review
- Advise the RE of proposed changes in the scope of the project or change in environmental conditions

# Environmental Certification

- Commits the RE to the jurisdiction of the Federal Courts in environmental matters
- Must be person legally responsible for the community's government – e.g., Mayor, City Manager, Chair of County Commission. Commonly is the person who signs the grant agreement
- Certifying Official can delegate role to another person (thru governing body resolution) – Copy of delegation must be kept on file in ERR & provided to HUD



# Submitting RROF to HUD/State/Tribe

- Cover letter to program office
- RROF (HUD-7015.15)
  - Double sided copy (both pages of form on one page)
  - Signed and complete
- Public Notice(s):
  - If Published: Copy of publication and affidavit or tear sheet
  - If Posted: Copy of posted notice and signed statement of distribution
  - Optional - Signed statement of mailed distribution

# Submitting RROF to HUD (Con't.)

- Do not send HUD the ERR – RE certifying official has certified to HUD that ERR has been properly prepared
- Make sure to send in all Public Notices – including floodplain notices (8-step), if applicable – and include affidavit of publication and/or evidence of posting

# Trouble-Shooting RROF/Notices

- If problems, HUD/GLO may ask for **re-publication** of notice and/or **re-submission** of RROF
- Reasons:
  - Notice period too short
  - Notice directed comments to Recipient, instead of RE
  - RROF signed before end of comment period
  - RROF incorrectly completed – e.g., no project location; project description vague, or “see attached” used
  - Long lapse between Notice and submission of RROF to HUD/State

# Summary of RROF Process: Categorical Exclusion (CEST) Projects

1. RE mails & publishes /posts **NOI-RROF public notice**
2. RE observes **7/10-day** comment period
3. RE addresses any comments received
4. RE signs RROF and submits to HUD/GLO, with proof of mailing, publication and/or posting  
(If Recipient is not RE, Recipient signs, too)
5. HUD/GLO observes 15-day comment period
6. HUD/GLO issues “Authority to Use Grant Funds” (AUGF)
7. RE implements project, including any environmental conditions that apply
8. **DO NOT OBLIGATE OR EXPEND ANY FUNDS** (Federal, Public or Private) **UNTIL THE AUGF IS ISSUED BY HUD/GLO** (58.22)

# Summary of RROF Process: Environmental Assessment (EA) Projects

1. RE mails, publishes and/or posts **FONSI/NOIRROF (“combined notice”)**
2. RE observes **15/18-day or 30-day** comment period
3. RE addresses any comments received
4. RE signs RROF and submits to HUD/GLO, with proof of mailing, publication and/or posting  
(If Recipient is not RE, Recipient signs too)
5. HUD/GLO observes 15 day comment period
6. HUD/GLO issues “Authority to Use Grant Funds” (AUGF)
7. RE implements project, including environmental conditions that apply
8. **DO NOT OBLIGATE OR EXPENDED ANY FUNDS** (Federal, Public or Private) **UNTIL THE AUGF IS ISSUED BY HUD/GLO** (58.22)

# Pointers for Request for Release of Funds

- *Do* include estimated funding amount on RROF (required if Multi-year funding 58.32(d))
- *Do* include estimated HUD funding on the public notice
- *Do* have RROF certified on single page (front/back on one page)
- *Do* have RROF certified *after* public comment period

# **OBJECTIONS TO THE REQUEST FOR RELEASE OF FUNDS**

# Objection Period and RROF Disapproval [ 58.72]

- 15 day objection period follows the RE submission of RROF to HUD/GLO/Tribe
- Objections must be received within 15 days from the time HUD/GLO/Tribe receives the RROF
- HUD/GLO/Tribe can deny the RROF if it has knowledge that :
  - The RE or other participants in the development process have not complied with 58.75, Permissible Basis for Objections
  - The RROF and certification are inaccurate



# Permissible Basis for Objections

## [ 58.75]

- Certification was not executed by RE's Certifying Officer
- RE failed to make a FONSI or FOSI determination
- RE failed to make written determination required in 58.35 or 58.47 (re-evaluation)
- RE omitted one or more steps in preparation, publication and completion of EA
- RE omitted one or more steps in preparation, publication and completion of an EIS
- RE and participants committed funds, incurred cost, or undertook activities prior to environmental clearance
- Another federal agency submits a written finding that the project is unsatisfactory from the standpoint of environmental quality.

# Objection Procedures [ 58.76]

- Objecting party must submit objection in writing to HUD/GLO/Tribe
- Written objection must include:
  - Contact information of objecting party and signature of authorized official/person
  - Date of signature
  - Describe basis for objection including facts or legal authority supporting objection
  - State when a copy of objection was mailed to RE's Certifying Officer

# Authorization of the Use of Grant Funds [ 58.77]

- Approval of the RROF satisfies the Secretary of Housing and Urban Development's responsibilities under NEPA and related laws and authorities
- The public and agencies seeking redress related to approved environmental reviews must deal with the RE and not with HUD
- It is HUD's policy to refer all complaints to the RE

# POST APPROVAL ACTIONS

# Post Approval Actions [ 58.72(c)]

- If cases where HUD has approved a RROF and later finds that the RE:
  - Violated 58.22
  - Did not comply with a clearly applicable environmental authority
- HUD shall impose appropriate remedies and sanctions
  - In accordance with the law and regulations for the program under which the violation was found

# Post – Review Monitoring and Training[ 58.77]

- HUD and GLO are authorized to conduct post-review monitoring
  - Limited environmental monitoring should be conducted during Program monitoring
    - May prompt in-depth monitoring
- HUD/GLO can require
  - RE staff presence during monitoring
  - RE staff attendance of training

# **Actions for Problems Identified After Approval of the RROF [ 58.77(d)]**

- If limited monitoring reveals problems, HUD/GLO can require in-depth monitoring
- HUD/GLO can require RE training at HUD/GLO sponsored or approved training.
- It can refuse to accept certifications of environmental compliance on future grants
- May suspend or terminate the RE's assumption of environmental review responsibilities
- May initiate sanctions, corrective actions, or other remedies specific in program regulations

# Regardless of Whether HUD Takes Action

- The RE's Certifying Officer remains the Federal Official for projects and activities for which it has submitted an RROF



Got the release?  
*Now* let us dig...

